

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**FRANCISCO J. CASTANEDA,**

**Plaintiff,**

**v.**

**YVONNE ROSALES, LILY STROUD,  
and PENNY HAMILTON,**

**Defendants.**

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**CAUSE NO. EP-22-CV-283-KC**

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF THE MAGISTRATE JUDGE**

On this day, the Court considered the above-captioned case. Pursuant to the El Paso Division’s standing orders, this case was referred to United States Magistrate Judge Miguel A. Torres to hear all pretrial matters. Standing Referral Order Re: Prison and Immigration Detainee Civil Rights Cases ¶ 2.<sup>1</sup> On March 31, 2023, the Magistrate Judge filed a Report and Recommendation (“R&R”), ECF No. 14, recommending that all of Plaintiff’s claims be dismissed, and that the dismissal count as a “strike” for purposes of 28 U.S.C. § 1915(g). *Id.* at 9–10.

Parties have fourteen days from service of a Report and Recommendation of a United States Magistrate Judge to file written objections. *See* 28 U.S.C. § 636(b)(1)(C).<sup>2</sup> Thus, Plaintiff’s initial deadline to file written objections to the Magistrate Judge’s R&R was April 14, 2023. *See* R&R 10. Plaintiff moved to extend his deadline to file written objections until May 15, 2023, and the Court granted his motion. *See* Mot. Extension of Time to File Answer 1–2,

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<sup>1</sup> Available at <https://www.txwd.uscourts.gov/wp-content/uploads/2022/12/Standing-Referral-Order-Re-Prisoner-and-Immigration-Detainee-Civil-Rights-Cases.pdf>.

<sup>2</sup> Federal district courts conduct de novo review of those portions of a report and recommendation to which a party has objected. *See* 28 U.S.C. § 636(b)(1)(C) (“A judge . . . shall make a de novo determination of those portions of the report . . . to which objection is made . . .”).

ECF No. 18; Apr. 18, 2023, Order, ECF No. 19. But the May 15 deadline has passed, and Plaintiff has not filed any objections to the R&R.

When parties do not file written objections, courts apply a “clearly erroneous, abuse of discretion and contrary to law” standard of review to a report and recommendation. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (“[T]he ‘clearly erroneous, abuse of discretion and contrary to law’ standard of review . . . is appropriate . . . where there has been no objection to the magistrate’s ruling.”); *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988) (“[A] party is not entitled to de novo review of a magistrate’s finding and recommendations if objections are not raised in writing by the aggrieved party . . . after being served with a copy of the magistrate’s report.”). After reviewing the R&R, the Court agrees with the Magistrate Judge’s proposed findings of fact and conclusions of law and finds that they are neither clearly erroneous nor contrary to law. *See Wilson*, 864 F.2d at 1221.

Accordingly, the Court **ADOPTS** the R&R, ECF No. 14, in its entirety, and **ORDERS** that Plaintiff’s Fourth, Fifth, Sixth, and Fourteenth Amendment claims are **DISMISSED WITH PREJUDICE** to their being asserted again unless and until Plaintiff’s conviction is “reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” *See Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994).

**IT IS FURTHER ORDERED** that Plaintiff’s Ninth Amendment claim is **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that Plaintiff’s Eighth Amendment claim is **DISMISSED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that the dismissal of Plaintiff’s claims shall count as a

“strike” for the purposes of 28 U.S.C. § 1915(g). The Clerk shall **SEND** via email a copy of this order and the final judgment to the Office of General Counsel for the Texas Department of Criminal Justice and the keeper of the “three-strikes list.”

**SO ORDERED.**

**SIGNED this 24th day of May, 2023.**

  
KATHLEEN CARBONE  
UNITED STATES DISTRICT JUDGE